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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,909

09/14/2006

Junkuan Wang

112701-753

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29157 7590 09/26/2008
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EXAMINER

MI, QIUWEN

ART UNIT

PAPER NUMBER

1655

NOTIFICATION DATE

DELIVERY MODE

09/26/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No. 10/598,909	Applicant(s) WANG ET AL.	
	Examiner QIUWEN MI	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 and 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-14, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

CONTINUED EXAMINATIONS

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/21/08 has been entered.

Applicant's amendments, in the reply filed on 8/21/08, are acknowledged. Any rejection that is not reiterated is hereby withdrawn.

Claims 1-21 are pending. Claims 9-11, 15-19 are withdrawn as they are directed toward non-elected invention groups. **Claims 1-8, 12-14, 20, and 21 are examined on the merits.**

Specification/Abstract Objections

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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In the instant case, Applicant is required to delete “The present invention relates to” on line 1 of the Abstract to be more clear and concise. The first letter of “a” in line 1 should be capitalized after the deletion.

Claim Rejections –35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 12-14, 20, and 21 are rejected under 35 USC § 102 (b) as being anticipated by Pruthi et al (US 6,264,982), as evidenced by Sivakumar et al (Polyphenolic constituents of the flowers of *Berberis aristata*, Journal of the Indian chemical society, 68 (9): 531-2, 1991)*, Bubicz (Occurrence of carotenoids in fruits of the genus *Berberis*, Bulletin De L’Academie Polonaise Des Sciences, 13 (5): 251-5, 1965)*.

Pruthi et al teach a composition for a dietary supplement (thus an oral composition, an oral pharmaceutical composition) for use in treating hemorrhoids includes 30-80% Indian barberry extract by weight (see Abstract). Pruthi et al indicate Indian Barberry is known botanically as *Berberis aristata* (col 2, line 1-5), and Indian barberry plant parts (thus a plant material, a berry) are broken into small pieces and then mixed with equal amounts of either water of milk (thus from animal origin) (thus the carrier milk will extract the lipophilic and hydrophilic

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bioactive components from Indian barberry) of in a first mixing bowl or chamber to produce a first mixture. The first mixture is heated to a boil and is maintained at a boil for 2 to 3 minutes. It is critical that this boiling time is not exceeded, as this will destroy the healing properties of the herbal ingredients. After heating, the first mixture is allowed to cool to room temperature and is then filtered to remove leaves, dirt, and other particulate (thus excluding insoluble fibers) to yield an extract (thus a liquid) (col 3, lines 20-30).

As evidenced by Sivakumar et al, *Berberis aristata* contains polyphenolic constituents such as quercetin (thus a flavonoid, a flavonol, a hydrophilic bioactive component), etc (page 531, 1st column, 2nd paragraph).

As evidenced by Bubicz, in the fruits of the 34 species of the genus *Berberis* (including *Berberis chitria* (page 254), the same as *Berberis aristata*), the fruits of all the species contain the same carotenoids: phytofluene, beta-carotene (thus a lipophilic bioactive component), lutein, zeaxanthin and flavoxanthin (page 254, last paragraph).

Since Pruthi et al teach extract the claimed plant material with the claimed carrier milk, it is deemed that bioavailability, miscibility and stability are improved.

Therefore, the reference is deemed to anticipate the instant claim above.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QM

/Michele Flood/

Primary Examiner, Art Unit 1655